

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**CHAD M CHEEK  
314 SOUTH LOCUST STREET  
COLFAX IA 50054**

**ABC BEVERAGE MANUFACTURERS INC  
ATTN – HUMAN RESOURCES  
P O BOX 4656  
DES MOINES IA 50306**

**ATTORNEY RICHARD PHELPS II  
P O BOX 152  
MINGO IA 50168**

**Appeal Number: 04O-UI-00319-BT  
OC: 10/05/03 R: 02  
Claimant: Respondent (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

ABC Beverage Manufacturer's, Inc. (employer) appealed an unemployment insurance decision dated November 3, 2003, reference 01, which held that Chad Cheek (claimant) was eligible for unemployment insurance benefits. Administrative Law Judge Donner conducted an initial hearing on this matter in appeal 03A-UI-12617-DT in which benefits were denied. The claimant appealed the decision indicating he did not participate due to lack of notice. The Employment Appeal Board remanded for a new hearing in an order dated January 7, 2004. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 26, 2004. The claimant participated in the hearing along with Attorney

Richard Phelps II. The employer participated through Chuck Denger, Distribution Manager for American Bottling, and Randy Hall, Regional Sales Manager.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The Findings of Fact set forth in the decision in appeal 03A-UI-12617-DT are adopted and incorporated herein as if set forth at length.

The claimant filed a claim for unemployment insurance benefits effective October 5, 2003 and has received benefits after the separation from employment in the amount of \$6,780.00.

**REASONING AND CONCLUSIONS OF LAW:**

The Reasoning and Conclusions of Law of the administrative law judge in appeal 03A-UI-12617-DT are adopted and incorporated herein as if set forth at length.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

The issue of gross misconduct cannot be resolved at this time. The claimant has been charged with an indictable offense in connection with his employment but the matter is still pending litigation. If the claimant is convicted, the issue of gross misconduct can be re-litigated provided the employer notifies Iowa Workforce Development of the results within five years. Iowa Code Section 96.5-2-c.

**DECISION:**

The unemployment insurance decision dated November 3, 2003, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$6,780.00.

sdb/d